

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

FILED: \_\_\_\_\_

STATE OF ARIZONA

SHANNON D ANDERSON

v.

ROBIN BERRYHILL

WILLIAM D HOWELL II

GLENDAL CITY COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

GLENDAL CITY COURT

Cit. No. CR2001006681

Charge: BY STORING BROKEN OR DISCARDED FURNITURE OR  
HOUSEHOLD EQUIPMENT OR APPLIANCES, OR PACKING BOXES, OR ANY  
DEBRIS IN A LOCATION WHICHIS VISIBLE TO A PERSON STANDING UPON  
ANY PUBLIC STREET, SIDEWALK OR RIGHT OF WAY

DOB: 05/12/54

DOC: 03/14/01

This Court has jurisdiction of this appeal pursuant to the  
Arizona Constitution Article VI, Section 16, and A.R.S. Section  
12-124(A).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

This matter has been under advisement since the time of oral argument on May 8, 2002. This Court has considered and reviewed the record of the proceedings from the Glendale City Court, exhibits made of record, the arguments and Memoranda submitted by counsel.

Appellant, Robin Berryhill, was charged by complaint of having violated Glendale City Ordinance 25-2(h) on or about March 14, 2001. The complaint charged:

Zoning Violation, a class 1 misdemeanor, by storing broken or discarded furniture or household equipment or appliances, or packing boxes, or any debris in a location which is visible to a person standing upon any public street, sidewalk or right-of-way, all in violation of G.C.C. 25-2(h) and 1-7.<sup>1</sup>

Appellant entered a plea of Not Guilty and the matter was scheduled for trial on August 15, 2001. At the trial, Steven Erno, a Code Compliance Inspector with the City of Glendale, testified, as did Appellant. At the conclusion of the trial Appellant was found guilty of the misdemeanor offense. Appellant was sentenced September 18, 2001. Appellant was placed on three (3) years probation (unsupervised), ordered to pay a fine of \$553.00, and ordered to remove all items which were the subject of the complaint from public view.<sup>2</sup> Appellant has filed a timely Notice of Appeal in this case.

Appellant has challenged the constitutionality of his conviction, but specifically the vagueness of Steven Erno's compliance orders issued to Appellant. Those compliance orders or warnings issued to Appellant before she was charged with the criminal complaint are of little relevance to the criminal charge as stated within the criminal complaint. The issue is,

---

<sup>1</sup> Misdemeanor Complaint CR2001006681, record on appeal from Glendale City Court.

<sup>2</sup> R.T. of September 18, 2001, at page 84.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

more appropriately, whether the Glendale City Ordinance is unconstitutionally vague, and whether the trial court erred in finding beyond a reasonable doubt from the evidence that Appellant had violated the conduct proscribed within the Glendale City Ordinance. This Court further notes that Appellant has failed to raise the constitutional issue at any time before the trial court. Nevertheless, this Court will address the merits of Appellant's constitutional claim.

**1. Standard of Review**

Appellant's claims raised issues of constitutional dimension and statutory construction. In matters of statutory interpretation, the standard of review is *de novo*.<sup>3</sup> However, the appellate court does not reweigh evidence.<sup>4</sup> Instead, the evidence is reviewed in a light most favorable to affirming the lower court's ruling.<sup>5</sup> Appellate courts must also review the constitutionality of a statute or ordinance *de novo*.<sup>6</sup>

**2. Vagueness of Ordinance**

There is a strong presumption in Arizona that questioned statutes and ordinances are presumed to be constitutional, and the party asserting its unconstitutionality has a burden of clearly demonstrating the unconstitutionality.<sup>7</sup> Whenever possible, a review court should construe an ordinance so as to avoid rendering it unconstitutional and resolve any doubts in

---

<sup>3</sup> In re: Kyle M., 200 Ariz. 447, 27 P.3d 804(App. 2001). See also, State v. Jensen, 193 Ariz. 105, 970 P.2d 937 (App. 1998).

<sup>4</sup> Id.

<sup>5</sup> 27 P.3d at 805; State v. Fulminate, 193 Ariz. 485, 492-3, 975 P.2d 75, 82-83 (1999).

<sup>6</sup> McGovern v. McGovern, No. D-125189, 2001 WL 1198983, at 2 (Ariz. App. Div. 2 Oct. 11, 2001); Ramirez v. Health Partners of Southern Arizona, 193 Ariz. 325 330-31, 972 P.2d 658, 663-64 (App. 1998).

<sup>7</sup> State v. Lefevre, 193 Ariz. 385, 389, 972 P.2d 1021, 1025 (App. 1998); Larsen v. Nissan Motor Corporation in the United States, 194 Ariz. 142, 978 P.2d 119 (App. 1998).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

favor of constitutionality.<sup>8</sup> A statute is unconstitutionally vague if it fails to give persons of average intelligence reasonable notice of what behavior is prohibited, or if it is drafted in such a manner that permits arbitrary and discriminatory enforcement.<sup>9</sup> A statute or ordinance may be impermissibly vague because it fails to establish standards for the police and public that are sufficient to guard against the arbitrary deprivation of liberty interests.<sup>10</sup> Due process does not require that a statute or ordinance be drafted with absolute precision.<sup>11</sup> Whenever the language of a legislative enactment is unclear, the courts must strive to give it a sensible construction and, if possible, uphold the constitutionality of that provision.<sup>12</sup>

Glendale City Code Section 25-2 provides in part:

No person shall erect, maintain, use,  
place, deposit, cause, allow, leave or permit  
to be or remain in or upon any private lot,  
building, structure or premises, or in or  
upon any public right-of-way street, avenue,  
alley, park, parkway or other public or  
private place, any condition, thing or act,  
to the prejudice, danger or annoyance of others,  
including but not limited to, the following:

. . .

---

<sup>8</sup> Id.

<sup>9</sup> *State v. Lefevre*, supra; *State v. Steiger*, 162 Ariz. 138, 781 P.2d 616 (App. 1989).

<sup>10</sup> *Recreational Developments of Phoenix, Incorporated v. City of Phoenix*, 83 F.Supp.2d 1072, 1087 (D.Ariz. 1999), citing *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct 1849, 144 L.Ed.2d 67 (1999).

<sup>11</sup> *State v. Lefevre*, supra; *State v. Takacs*, 169 Ariz. 392, 819 P.2d 978 (App. 1991), citing *Fuenning v. Superior Court*, 139 Ariz. 590, 680 P.2d 121 (1983).

<sup>12</sup> *State v. Fuenning*, supra; see Maricopa County Juvenile Action No. JT9065297, 181 Ariz. 69, 887 P.2d 599 (App. 1994), citing *State v. Wagstaff*, 164 Ariz. 485, 794 P.2d 118 (1990).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

(h) the storage of furniture, except furniture designed and placed for outdoor use, household equipment, appliances, landscape material, cardboard material, plastic material, debris or any similar materials in a location which is visible to a person standing upon any city street, sidewalk, or right-of-way.

The specific language used within the Glendale City Code make it unlikely that an innocent person would engage in the conduct prohibited by the ordinance inadvertently. The specific language used clearly gives persons of average intelligence reasonable notice of behavior which is prohibited:

storage of furniture, appliances, household equipment and other specifically referenced materials is prohibited in locations that are visible to a person standing upon a city street, sidewalk, or right-of-way. It does not appear that this ordinance was drafted in such a manner that would permit an arbitrary or discriminatory enforcement of the ordinance. Appellant's arguments that the discarded appliances and furniture in her yard were decorative is of little merit. Regardless of Appellant's purpose or intent, the storage of these items in public view, is conduct which violates the Glendale City Code.

Appellant also argues ambiguity in the compliance orders issued by Steven Erno. As previously discussed, the compliance orders are not relevant to the criminal charge, and the evidence forming the basis of Appellant's conviction.

### **3. Sufficiency of the Evidence.**

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>13</sup> All evidence will be viewed in a light most favorable to

---

<sup>13</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>14</sup> If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.<sup>15</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>16</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>17</sup> The Arizona Supreme Court has explained in State v. Tison<sup>6</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>18</sup>

**4. Conclusion.**

---

L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>14</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>15</sup> State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>16</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3<sup>rd</sup> 977, review granted in part, opinion vacated in part 9 P.3<sup>rd</sup> 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>17</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>6</sup> SUPRA.

<sup>18</sup> Id. At 553, 633 P.2d at 362.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/05/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000747

For all of the reasons explained in this Court's opinion, this Court finds the Glendale City Code Section 25-2(h) to be constitutionally sound as applied by the Glendale City Court to Appellant. This Court further finds substantial evidence exists to support the conviction by the Glendale City Court.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed.

IT IS FURTHER ORDERED remanding this case back to the Glendale City Court for all further and future proceedings in this case.